

ANG HOCK HAI v. TAN SUM LEE & ANOR.

[O. C. J. (Buttrose J.) March 1, 1957]

[Singapore—Suit. No. 354 of 1956]

Negligence—Use of dangerous material at premises for business purposes—Escape of petrol or other inflammable material which caught fire and caused damage—Rule in Rylands v. Fletcher applied.

This was an action brought by the plaintiff on his own behalf and as administrator of the estate of Ang Ah Choon decd., his son, and Ng Geok Keow decd., his wife, for damages arising out of their deaths in a fire in which his personal property was also destroyed. The plaintiff was the tenant of the whole of the premises at 125 Bencoolen Street and with his wife and two children aged 7 and 5 respectively occupied the front portion of the first floor of the premises. The defendants, who were partners, carried on the business of tyre repairers and tyre dealers registered under the name of Siong Seng & Co. and were the sub-tenants of the plaintiff of the front portion of the ground floor of the premises. A very large quantity of tyres and tubes were stored on the premises. For the purposes of their business it was necessary for the defendants to keep petrol on the premises for the purpose of mixing with rubber to form a gum and there was petrol on the premises at the material time. In the early hours of the morning of September 26, 1955, a fire broke out on the premises which completely gutted it and the adjoining houses and in consequence of which the plaintiff's wife and one of his sons were burnt to death. At the time the fire started there was no one in the defendants' premises. The proprietor who was the first defendant and his employee Sing Kek had gone for the night after locking up the premises which were entirely deserted. The back door was bolted on the inside. The Court accepted the evidence given on behalf of the plaintiff that the defendants' premises were locked up by their employee Sing Kek who was the last to leave at about 2.30 a.m. only a few minutes before the fire broke out.

There was no evidence as to how the fire started but shortly after its commencement at least three explosions were heard in fairly quick succession in each case followed by a burst of flame which quickly engulfed the premises. So rapidly was the spread of fire due to the explosions that the plaintiff's wife and one of the children fell through the burning floor into the heart of the fire raging below. The plaintiff, his other child, his brother and two other tenants were able to make their escape. On these facts the plaintiff contended: (a) there was an absolute liability on the defendants by virtue of the rule in *Rylands v. Fletcher*⁽¹⁾; (b) his case fell within the principle known as *res ipsa loquitur*, i.e., that in the circumstances the fact of the fire spoke for itself and led to the conclusion of negligence of the defendants' part unless it could be otherwise explained; (c) in any event the plaintiff on the evidence had established a *prima facie* case of negligence which the defendants had not displaced.

The defendants denied that they were negligent and maintained that neither the rule in *Rylands v. Fletcher* nor the principle of *res ipsa loquitur* applied.

Held: (1) in this case the plaintiff had established that the defendants were negligent and on that ground alone was entitled to succeed;

(2) an absolute liability was imposed on the defendants under the rule in *Rylands v. Fletcher* to prevent the escape of the petrol or other inflammable material. They have brought upon premises in which they were in *de facto* possession for the purposes of their business dangerous materials which would not naturally be upon the premises and they were under an obligation to keep those materials under control so as not to cause mischief to their neighbours.

Cases referred to:—

- (1) *Rylands v. Fletcher* (1868) L.R. 3 H.L. 330.
- (2) *Collingwood v. Home & Colonial Stores Ltd.* (1936) 3 All E.R. 200.
- (3) *Blake v. Wolf* (1898) 2 Q.B. 426.
- (4) *Moore v. R. Fox & Sons* (1956) 1 Q.B. 596, 617.

ACTION FOR DAMAGES.

Denis Murphy for the plaintiff.

N. N. Leicester for the defendants.

Buttrose J. (after setting out the facts as reproduced in the head-notes above continued):—In view of the conclusions at which I have arrived I shall deal with the question of negligence first.

That the defendants brought and stored petrol on their premises is not disputed and I am satisfied on the evidence that the fire originated in the defendants' premises at 125 Bencoolen Street. There was a direct conflict of evidence as to the quantity of petrol and other inflammable material stored by them. I must say at once that I have no hesitation in accepting the evidence of the plaintiff and his witnesses on this matter in preference to that of the first defendant and his employee whose evidence generally did not impress me.

Now petrol is an article dangerous in itself. In dealing with it there is a special duty to take precautions that no damage shall accrue to adjoining premises by reason of explosion or fire. In my opinion no proper or adequate precautions were taken by the defendants in this case.

The first defendant admitted that he mixed the petrol and rubber in a tin similar in all respects to Exhibit D₁. The Chief Chemist Mr. Frye who was called by the plaintiff while saying that he thought it was kept reasonably safe in Exhibit D₁ with the lid on made it quite clear that even with the lid on it was not completely air tight and inflammable petrol vapour could escape. Any naked light, he said, within a yard or two would be dangerous.

The plaintiff's evidence which I accept was that the tin in which the defendants mixed the petrol with the rubber did not have a lid on it but that a piece of plank was simply put across it and it was kept under the table.

Further there was no restriction on smoking on the premises. The defendant said he was unable to say whether his employees did or not but on being pressed admitted that some did and some didn't. Their customers smoked unchecked as could the tenants who occupied the upstairs portion of the premises when

passing through the defendants' shop. No notices were exhibited forbidding smoking or indicating the presence of petrol or other inflammable material on the premises. Although there was evidence that on all previous occasions some-one in the defendants' employ either remained on the premises or slept outside on the 5' foot way on this particular night the shop was closed and locked at about 2.30 a.m. according to the evidence given on behalf of the plaintiff and no-one was left in charge of the premises. There were no means available for gaining entrance from outside. In these locked premises was a quantity of petrol and other inflammable material in tins. I am satisfied, on the evidence, that the four gallon drum was not properly covered and that dangerous and inflammable vapour could escape from it. It is true the first defendant said he had installed a fire extinguisher on the premises but this in the circumstances was, in my view, inadequate and of little or no use in premises which were securely locked and into which access was impossible from outside. There was no watchman at the premises at the material time. There was a very high degree of care imposed upon the defendants in the circumstances of this case which they failed to exercise.

The plaintiff has therefore in my view established that the defendants were negligent and on that ground alone is entitled to succeed.

I am also of the opinion that an absolute liability was imposed on the defendants under the rule in *Rylands v. Fletcher*⁽¹⁾ which is that a person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril and if he does not do so is *prima facie* answerable for all the damage which is the natural consequence of its escape. That petrol was a dangerous thing to bring upon the premises there can be no doubt. The defendants brought it or caused it to be brought upon their premises. The liability for damage caused by dangerous things is absolute and the duty which the law casts upon them under such circumstances is an absolute duty to keep it in at their peril. The defendants can only excuse themselves by showing that the escape was owing to the plaintiff's default or that he consented or that it was the consequence of act of God or caused by the independent act of a third party. In my view they have completely failed to do so.

It was argued by counsel for the defendants that unless it could be proved affirmatively that the origin of the fire was due either to intentional starting or negligence the occupier was not liable. He submitted that there was no evidence as to how the fire started and that an unexplained origin of a fire or an accidental fire was not negligence.

Now the plaintiff in his pleadings puts his claim under the rule in *Rylands v. Fletcher*⁽¹⁾ not on the escape of fire but on the escape of petrol or other inflammable material which caught fire and exploded and caused the damage and destruction alleged.

In the view I take there was an absolute liability on the defendants to prevent the escape of the petrol or other inflammable material. They were required to keep it in at their peril. Whatever be the reason for its escape the defendants are still liable under the rule unless they can bring themselves within the exceptions to which I have referred.

Now it was contended on behalf of the defendants that the rule in *Rylands v. Fletcher*⁽¹⁾ was limited to non-natural user of the land and did not apply to a natural user thereof for domestic purposes. Two cases were cited in support of this proposition, namely, *Collingwood v. Home and Colonial Stores, Ltd.*⁽²⁾, and *Blake v. Woolf*⁽³⁾.

The first case dealt with the question of whether the doctrine of *Rylands v. Fletcher*⁽¹⁾ can be extended to the ordinary domestic use of electricity and a clear distinction was drawn between its domestic use and its transference in bulk along mains. The former was held not to be within the rule since it was part of the ordinary use of property.

The second case dealt with the overflow of water from a cistern. It was held that the bringing of water on to domestic premises and the maintaining a cistern in the usual way was an ordinary and reasonable use of the premises.

In my view neither of those authorities has any application to the present case.

Here the defendants have brought upon premises in which they are in *de facto* possession for the purposes of their business dangerous materials which would not naturally be upon the premises and they are under an obligation to keep those materials under control so as not to cause mischief to their neighbours.

It is interesting to note in this connection that in *Charlesworth on Negligence* (3rd Edition) at page 253 the learned author submits that liability under *Rylands v. Fletcher*⁽¹⁾ is based on the escape of the dangerous thing from land in the occupation of the defendant and that if the escape causes damage there is no necessity to satisfy the further condition that the presence of that thing on the land constituted a non-natural use of the land.

Finally, it is unnecessary for me, in view of the conclusions at which I have arrived to decide the question of whether the principle of *res ipsa loquitur* applies in this case and I express no opinion upon it. On this

aspect of the matter I prefer in the words of Romer L.J. in *Moore v. R. Fox & Sons*⁽⁴⁾ :—

"To rest my conclusion on the view that at the close of the whole evidence which the plaintiff called he had established a *prima facie* case of negligence against the defendants which they have failed by their own evidence to displace."

It only remains therefore to assess the damages to which the plaintiff is entitled. As to this aspect of the case there was no cross-examination of the plaintiff either with regard to the items in respect of which special damages were claimed or on the question of damages generally nor did counsel for the defendants make any submissions thereon.

I am left therefore with the plaintiff's unchallenged evidence with regard to the items in respect of which special damages are claimed as set out in the statement of claim but I think he tended to over-estimate their value.

Giving the best consideration I can to this question I assess the damages to which the plaintiff is, in my judgment, entitled as follows :—

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|---|---------|
| 1. Special damage suffered by the plaintiff by reason of loss of his personal property ... | \$2,000 |
| 2. Special damage suffered by the estate of Ang Ah Choon deceased by reason of loss of personal property | \$ 300 |
| 3. Special damage suffered by the estate of Ng Geok Keow deceased by reason of loss of personal property | \$3,000 |

On the evidence before me I am unable to make separate awards with regard to funeral expenses but I award a sum of \$622 in respect of both estates.

With regard to loss of expectation of life I award in the case of the child the sum of \$1,500 and in the case of the mother the sum of \$2,500.

Finally with regard to pain and suffering the evidence of Mr. Frye was that as the result of carbon monoxide poisoning the mother would certainly be unconscious before death while the child would probably not be although he would be suffering from lassitude mental confusion and unco-ordination. In each instance death must have ensued very quickly. I am not disposed to make any award under this head with regard to the mother but in respect of the child I award \$200.

There will be judgment, therefore, for the plaintiff for \$10,122 and costs.

Order accordingly.

Solicitors: *Murphy, Dunbar & Chung; Leicester & Chen.*

SEE KENG WAH v. LIM TEW HONG

[O. C. J. (Chua J.) March 28, 1957]

[Singapore—Suit No. 1444 of 1955]

Negligence—Motor car accident—Negligent driving of servant or agent—Personal injuries—Proof of ownership of motor car—Prima facie evidence of employment of driver—Doctrine of res ipsa loquitur.

Where a plaintiff in an action for negligence proves that damage has been caused by the defendant's motor car the fact of the ownership of the motor car is *prima facie* evidence that the motor car, at the material time, was being driven by the owner, or by his servant or agent.

There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or his servant, and the accident is such as in ordinary course of things does not happen if those who have the management use proper care it affords reasonable evidence, in the absence of explanation by the defendant that the accident arose from want of care.

Cases referred to :—

- (1) *Barnard v. Sully* 47 T.L.R. 557.
- (2) *V. V. V. Menon v. H. Pigeoneau* (1957) M.L.J. 85.
- (3) *Barkway v. South Wales Transport* (1950) 1 All E.R. 392.
- (4) *Scott v. London & St. Katherine Docks Co.* 159 E.R. 665.

CLAIM FOR DAMAGES.

Chong Thutt Pitt for the plaintiff.

H. E. Cashin for the defendant.

Chua J. :—The plaintiff, a little boy aged three at the date of the accident, by his next friend (his father), claims damages for personal injuries due to the negligent driving of the servant or agent of the defendant. It is admitted that the defendant was the owner of the car at the date of the accident.

The plaintiff on the 4th April 1955 was being taken to the sea-side by his elder sister See Yim Leng (P.W.5) together with two other sisters and a brother. They crossed half of Beach Road and stood on the road divider, which was in the middle of the road, for the traffic to pass. See Yim Leng was holding the plaintiff by his left hand. While they were standing there the car of the defendant driven by one Han Hung Juan ran into the plaintiff who fell backwards on to the road and sustained injuries.

The plaintiff did not bring evidence to prove that Han Hung Juan, the driver of the car, was the servant or agent of the defendant but said that the fact of ownership was *prima facie* evidence that the car, at the material time, was being driven by the owner or by his servant or agent and cited as his authority the case of